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WORK IN REPAIR, DISTINGUISHED FROM WORK IN CONSTRUCTION, AS BRINGING AN EMPLOYE UNDER FEDERAL EMPLOYES' LIABILITY ACT.

A case passed upon by Supreme Court of Iowa exhibits another instance of the wisdom of the suggestion made in 79 Cent. L. J. 37, that when an action for damages to an employe of an interstate carrier is brought, the plaintiff should have counts for recovery under state and federal law, and then his petition could be maintained accordingly as the evidence demanded.

In the case referred to, Justice Holmes said: "Whether the case arose under the federal law or under the state law, it was equally cognizable in the state court, and had it been presented in an alternative way in separate counts, one containing and another omitting the allegation that the injury occurred in interstate commerce, the propriety of proceeding to a judgment under the latter count, after it appeared that the first could not be sustained, doubtless would have been freely conceded. Certainly nothing in the federal act would have been in the way." As only state practice could possibly interfere, this difficulty, if existent, ought to be cured.

The case to which we now refer is Ross v. Sheldon, 154 N. W. 499, and the question whether the injury sued for occurred to an employe engaged or not in interstate commerce was so close, that the Iowa Supreme Court stood five in the affirmative to two the other way, and the action under state law was held wrongly brought. The trial court holding this way, its judgment was modified so that it "shall appear on the face thereof that it was rendered" in such a way as not to be a bar to an action under the federal act. But, if it is too late when plaintiff is through with the first suit, to bring the proper action, this modification would not help much.

So much for preliminary to considering the close question in the facts of the case.

These facts were that defendant, an interurban electric street railway, had its entire line in Iowa, but by means of connections with other lines of railway, more than 80 per cent of its business was interstate business. It received freight from connecting lines originating without the state and destined to points upon the line of the defendant. Plaintiff was a lineman in its employ at the time of his injury.

This injury arose out of the work of installing an "automatic" system as a more efficient system than what was called the "hand" system then in use.

The court said: "The contention of appellant is that the work in which the decedent was engaged was not *repair* or *maintenance* work, but was new *construction* work. That there may be a distinction between repair work and construction work is recognized in Pedersen v. Delaware, L. & E. R. Co., 229 U. S. 146, Ann. Cas. 1914C, 153. The argument for appellant is that the lines and instrumentalities of the defendant were complete, and, as such, in *repair* without the addition of new crossarms and without the proposed 'automatic' system; that while the automatic system was proposed to be used upon the line (and therefore in interstate commerce) it had not yet been thus used."

It is useful here to compare the reasoning in the prevailing opinion and that in the dissenting opinion.

The former says: "The line of demarcation between repair work, on one hand, and construction work on the other, is not always easily discernible. Repair often, if not usually, involves more or less construction and substitution. It likewise involves betterment and improvement. * * * The distinction between 'repair' and 'construction' work must not be drawn too fine. The trend of the cases thus far decided indicates that labor and betterment upon an

interstate line of railway will not be deemed as new construction work unless it is clearly such. That is to say, mere doubt will be resolved in favor of 'repair and maintenance.'"

It is then stated that substituting a 90-pound rail for a 60 would come under repair and maintenance, and so adding four wires to one and adding new cross-arms to support the extra wires.

We pause to say, that the cases are not parallel, because the heavier rail is an improvement in betterment, while the wires and new cross-arms are incident to the installation of a new system.

The dissenting opinion says: "The record does not indicate that the old hand system needed any repairs. As a hand system, it was answering the purpose, and was, in fact, doing all the work of a block system for both intra and interstate commerce at the time plaintiff was injured. It was not the betterment even of an old system, but the construction of a new and independent one, and it does not matter, I think, that part of the old was to be used with the new when the new one was constructed." Whether so or not might depend on several factors.

We think that neither opinion proposes what would be a better test in such an inquiry as was before the court. That test would be the power of Congress or of the Interstate Commerce Commission to impose on interstate carriers improvement or change in equipment. For example, we do not think it would be construction to change an engine from steam to electricity, or to carry a certain kind of car couplers, or to install frogs of a certain make, or for an electric line to adopt the automatic system.

If these changes are made in the interest of safety, the purpose that adds them takes little account of the details which go into their being installed. It is a new system that comes into being, but it is-a system for perfecting an instrumentality of interstate commerce, in the meantime permissively putting up with the old arrangement. Therefore, the majority view seems to us the correct one.

NOTES OF IMPORTANT DECISIONS.

WAIVER—STIPULATION IN BENEFIT INSURANCE CONTRACT AS OPPOSED TO PUBLIC POLICY.—The case of Gilchrist v. Mystic Workers of the World, 154 N. W. 575, decided by Michigan Supreme Court, presents the question of the right of one to waive a rule of statute forbidding the introduction in evidence of privileged communications.

This case was an action on a benefit certificate of a deceased member of a fraternal insurance society. The court held in this case, that admissions made by the member were competent evidence, because "plaintiff, as beneficiary, can recover only according to the contract which the insured made with defendant," a proposition especially sound as to a beneficiary having no vested interest in such a contract. But it refused to admit evidence by physicians attending decedent as to how he came to his death.

The application for insurance, to be taken as part of the benefit certificate issued, expressly waived exclusion from evidence of privileged communications by patient to his physician. In this case it was sought to show death was by abortion consented to by the member, the member so stating to her attending physician. This would have nullified the policy, if believed.

The court refers to its statute excluding disclosure by an attending physician with an exception where a will is offered for probate, when his personal representatives may waive the privilege. It said: "Our statute creates an absolute privilege with but one exception. * * * It has been the policy of the legislature and the courts of this state to protect this privilege. The waiver contained in the application was therefore against public policy and void and the testimony of the attending physicians as to all knowledge obtained by them in such capacity was properly excluded. This includes all of the testimony of the physicians as to matters which were obtained from deceased in their professional capacity, together with their opinions based upon such information."

The court appears to be of the view, that the exception in its statute intensified the exclusionary rule therein, while, as a rule of policy, it seems to us to have been weakened

thereby. It left the rule merely as one of admissibility of evidence merely. And it would seem less difficult to waive a rule of evidence, than to waive a strict statutory contract right.

But even as a contract right, why is it against public policy to waive it by a stipulation made at the very inception of the contract which gives the right? The privilege of a patient is not of the class of confidential communications between husband and wife. The latter affect others or at least another. Each party has an interest therein. In the former only the patient is interested, and his privies.

The court cites a New York case where statute provided there could be no waiver except upon a trial or examination where the evidence is offered or received, and it was said its apparent purpose was to guard against waivers "inadvertently or improperly obtained previously to the trial of an action." We do not see how this case touches the question before the court, and by the case there is implied admission that, but for the direct prohibition—expressing statutory policy—the waiver would be valid. See Holden v. Metropolitan L. Ins. Co., 165 N. Y. 13, 58 N. E. 771.

INTOXICATING LIQUORS—BURDEN OF PROOF ON DEFENDANT FURNISHING TO PURCHASER.—Concealment of identity of the keeper of a "Blind Tiger" appears seriously menaced by a late decision by Georgia Court of Appeals, and the conviction of one of its agents may be a valuable lesson in other jurisdictions. Slaughter v. State, 86 S. E. 741.

In this case it was held that where defendant received money from another person requesting him to procure him some whiskey and he goes off and returns with the whiskey, the burden was on defendant to explain where, how and from whom he got the liquor, if he is to be exonerated as the seller. If his explanation is believed to be a mere subterfuge it may be disregarded by the jury.

The usual method of putting out liquor by the proprietor of a "blind tiger" is to have irresponsible agents to give a hint of the "blind tiger's" existence and to act as *media* for its sale, the proprietor resting on the assurance that he will not be disclosed and that no one will think these agents were such proprietors. But a way is opened by this ruling to get at the proprietor or have his agents suffer vicariously for him. "It is to laugh," however, if one saw some of these agents, to suppose a jury really would believe that it was nothing more than a subterfuge for one to declare he was an agent or runner for a "blind tiger" and not its proprietor. Courts might not be thought going very far in taking judicial cognizance of the fact that such as he was not the proprietor of a "blind tiger."

DAMAGES—MEASURE OF, WHERE PUBLIC SERVICE CORPORATION GIVES LOWER RATE TO ONE OF TWO COMPETITORS.—The damage to one of two competing businesses that is discriminated against by a public utility by lower rates given to the other would seem to be of such an elusive and variant character, that statute ought to declare in what it consists. The discussion in a case by the District Court of the Southern District of Iowa well illustrates the truth of the above observation. Homestead Co. v. Des Moines Electric Co., 226 Fed. 49.

Thus this case shows that a public service corporation charged plaintiff the established public rates for electricity and its competitor 42 per cent of such rates. Plaintiff sued for the difference in such rates and there was held to have been stated a cause of action only for nominal damages.

The court said: "As a general proposition, I do not think that the difference in rate is the measure of damages. I think a great deal of confusion has arisen by failing to keep in mind the real basis for the cause of action for damages (in such cases). The injured person was not injured by reason of the higher rate charged to him, it being conceded that such rate was reasonable; if he has been damaged, it is because of the lower rate charged his competitor, and this being true, the difference between such lower rate and the higher rate charged a competitor cannot always measure the loss actually sustained as a direct result of the discrimination." There is quoted in apt support of this statement, Penna. Co. v. Coal Co., 230 U. S. 184, Ann. Cas. 1915A, 315.

This reasoning gives suggestion that damages as a direct result of the discrimination might be less than the difference in rates, but scarcely could be more, and the ruling was that a case for nominal damages was stated might have been proper upon the pleadings in question. We think, however, that such damages might be greatly more or greatly less than such difference. The fact of discrimination should be regarded as a tort and its reasonably probable consequences, under all of the circumstances, taken into account. If its tendency is to divert business to the favored competitor, the profits from such diversion ought to be an element—if not the main element—in damages. If its tendency is to cripple fair competition, this wrong the law should redress. Additionally, punitive damages for the abuse of power by an agency *publici juris* ought to be added.

GUARANTY BY ONE RAILROAD COMPANY OF THE BONDS OF ANOTHER.

A railroad company has no power to guarantee bonds of another unless it is authorized to do so expressly or impliedly by its charter or the statutes of the state in which it is organized. This is so because "a corporation is a mere creature of law and it cannot act at all without law. A contract made by it without authority, is void, even in the hands of a bona fide holder for value. Its legal capacity to contract cannot be enlarged by estoppel."[1]

Sometimes a state[2] by express enactment authorizes one railroad to guarantee the bonds of another, and in that case no question can arise as to the *power* to guarantee, but usually coupled with the power are directions as to when and how the power may be exercised, and the ordinary requirement is that before the guaranty can be made the shareholders must, at a meeting duly held, authorize the act of guaranty by a two-thirds, or three-fifths on some other proportional vote.

More frequently neither the charter of a railroad company nor the statutes of the state in which it is organized expressly authorize it to guarantee the bonds of another, but instead, they confer certain powers upon the company which imply authority to guarantee bonds. In almost all cases where certain powers are given from which implication arises that the company may guarantee bonds, certain directions are laid down for the exercise of the granted powers, and upon the compliance or notice of non-compliance with these directions on regulations depends the validity or invalidity of the bonds in the hands of bona fide holders for value.

In a comparatively recent case it appeared that the Louisville, etc., Ry. Co. was authorized by statute to guarantee the bonds of another company upon the petition of a majority of the stockholders requesting it to do so. It guaranteed the bonds of another company without complying with this provision of the statute requiring a petition, and the Supreme Court of the United States held that the bonds were valid in the hands of bona fide holders for value without notice of the failure to comply with the statute requiring a petition, but invalid in the hands of those with notice of the failure.[3]. In this case the rule was laid down that where one is dealing with a corporation he must take notice of the power conferred on it by law and ascertain whether it is acting within the general scope of its authority. But this is all that he is required to do. He does not have to go further and see that the corporation has complied with the legal formalities, which are prerequisites to its existence, or to its action, because such requirements may in fact have been complied with. He knows that the law requires that the formalities are to be observed, but he has no means of knowing whether they have been complied with or not, for he has no access to the books of the corporation, and the law gives him the right to presume and act on the presumption that the persons acting for the corporation have done those things which the law conferring power on them says they shall do.[4]

An Indiana statute conferred power only upon a railroad company, "whose line extended across the state" to guarantee the bonds of another company, and because the line of the road guaranteeing the bonds did not extend entirely across the state, the bonds were held to be void. It was urged in behalf of the holders of the bonds that the guarantor company was brought within the purview of the statute because of the connecting lines leased by it, and that these

(1) Connecticut, etc., Ins. Co. v. Ry. Co., 41 Barb. (N. Y.) 24.

(2) Ex Ind. Stat.

(3) Louisville, etc., Ry. Co. v. Trust Co., 174 U. S. 552.

(4) Louisville, etc., Ry. Co. v. Trust Co., 174 U. S., l. c. 571; Zabriskie Ry. Co. v. Railroad, 64 U. S. 398; Atchison, T. & S. F. Ry. Co. v. Fletcher (Kan.), 24 Am. & Eng. R. Cas. 34; Bank v. Telephone Co., 116 Minn. 4, 133 N. W. 91.

leased lines gave it a line of railroad extending across the state. But the court said that "the difficulty with this contention is that it appears to be settled by repeated decisions that there is in Indiana no law authorizing a railroad company of that state to lease a line of another railroad company either within or without the state, and that therefore the lease of the connecting lines was *ultra vires* the guarantor company."[5]

A statute of Illinois provided that it should not be lawful for any railroad company of Illinois, or its directors to consolidate its road with any railroad out of the state, to lease its road to any railroad company out of the state, or to lease any railroad company out of the state, "without first having obtained the written consent of all the stockholders of said road residing in the State of Illinois, and any contract for such consolidation or lease which may be made without first having obtained said written consent signed by the resident stockholders in Illinois, shall be null and void." Of this statute the court said: "It did not limit the scope of the power conferred upon the corporation by law, an excess of which could not be ratified, or be made good by estoppel, but only prescribed regulations as to the manner of exercising corporate powers, compliance with which the stockholders might, or the corporation might be estopped by lapse of time or otherwise to deny."[6] Here the power was given to lease or consolidate, provided it was done with the written consent of the resident stockholders, and a contract made without such written consent was not null and void, where the other contracting party did not know that the written consent had not been given, even though the law said that it should be void, for the reason that it was a condition, or regulation which might have been complied with.

(5) Central Trust Co. v. Indiana, etc., Ry. Co., 98 Fed. 666.

(6) St. Louis, Vandalia, etc., Ry. Co. v. Terre Haute, etc., Ry. Co., 145 U. S., l. c. 403.

The statutes of Ohio, Missouri[7] and other states empower railroad companies "by means of their subscription to the capital stock of any other company, *or otherwise*," to aid it in the construction of its road for the purpose of forming a connection between the two lines provided it is done with the consent of the stockholders, and the courts have held that under these statutes one railroad can guarantee the bonds of another, and that the bonds so guaranteed will be valid in the hands of bona fide holders without notice, even though the stockholders did not give their consent, on the ground that the doctrine that a corporation cannot vary from the object of its creation, and that persons dealing with a corporation must take notice of whatever is contained in the law of its creation, does not apply to "those cases in which a corporation acts within the range of its general authority, but fails to comply with some formality or regulation which it should not have neglected but which it has chosen to disregard."[8]

One who takes from a railroad or business corporation, in good faith, and without actual notice of any inherent defect, a negotiable obligation duly issued and disclosing upon its face no want of authority, has the right to assume its validity of the corporation could by any action of its officers, or stockholders or both, have authorized the execution and issue of the obligation.[9] In the language of a court passing on this question, "it would be intolerable to hold that the ultimate or secondary purchaser of a negotiable bond offered on the market and guaranteed by another corporation is bound to go to the records of the corporation executing the guaranty and ascertain at his peril that the requisite authority had been

(7) Ohio Statutes; R. S. of Mo. (1909), Sec. 3078.

(8) Zabriskie v. Railroad Co., 64 U. S. 381, l. c. 398.

(9) Louisville, etc., Ry. v. Louisville Trust Co., 174 U. S., l. c. 573.

given at a duly called meeting of its stockholders."[10]

But it is not always easy to determine whether the act of guaranty is *ultra vires* or not. Mr. Morawitz says that it is "impossible to decide abstractly that acts of a particular description are within or without the chartered powers of a corporation. The right of a corporation to perform an act depends in every case upon all the surrounding circumstances."[11] Judge Lurton, in the case of Tod v. Land Co.,[12] also said: "When the question is, as here, whether or not a particular act is *ultra vires,* decided cases are of little value. Each case must be largely a question of fact." In this case the land company was authorized by its charter to buy and lease mineral and timbered lands; to establish rolling mills, saw mills, factories, etc., and to effect consolidation with any railroad or transportation company. The Kentucky railway was organized under a charter which provided that its stock might be subscribed for by any individual or corporation. The land company acquired practically all of the stock of the railroad company, and at the same time owned a vast quantity of timber land on the projected continuation of the railway. In order to develop these lands and utilize the timber thereon, it became most essential that the railroad be completed. Each company had express authority to borrow money and issue bonds to carry out the purposes of its organization. The court held that the land company could guarantee the bonds of the railway company.

If railroad companies may issue their own bonds to raise money to carry into effect the purposes for which they were created, they can guarantee the payment of bonds which they have lawfully received from cities and counties and put them upon the market as a means of augmenting their credit, and save themselves from the necessity of issuing their own bonds to accomplish the same purpose.[13] A railroad company which by its charter has power to issue its own bonds has the power to guarantee the bonds of another railroad corporation which it receives in payment of the debt to it of the last named company and which bonds it transfers in payment of its own debts.[14] It is said by Judge Sanborn that "the right to consolidate with a corporation includes the right to purchase a part or all of its stock for the use of the shareholders of the purchasing company, and the right to pay for it by a guaranty of the payment of its bonds."[15]

There is no absolute want of power in an ordinary business corporation to bind itself as a guarantor, and if such a corporation has the power to issue bonds or other commercial securities, and becomes the holder of such bonds or securities issued by other corporations it may indorse and guarantee them upon transferring them for the purpose of raising money to carry out any purpose for which it might borrow money.[16]

A negotiable security of a corporation which upon its face appears to have been duly issued by such corporation in conformity with the provisions of its charter is valid in the hands of a bona fide holder thereof without notice, although such security was in fact issued for a purpose, and at a place not authorized by the charter of the company and in violation of the laws of the state where it was actually issued.[17]

A citizen who deals with a corporation, or who takes its negotiable paper is presumed to know the extent of its corporate power. But when the paper is, upon its

(10) Gay v. Hudson, etc., Power Co., 190 Fed. 785; Bank v. Bank, 16 N. Y. 125.

(11) Mor. Priv. Corp. § 362.

(12) Tod v. Land Co., 57 Fed. 53, l. c. 59; Mercantile Trust Co. v. Kiser, 91 Ga. 636, 18 S. E. 358.

(13) Railroad v. Howard, 7 Wall. (N. S.) 412.

(14) Rogers L. & M. Works v. Southern R. R. Assn., 34 Fed. 280; Arnot v. Railway Co., 67 N. Y. 315.

(15) Pearsall v. Ry. Co., 73 Fed., l. c. 938.

(16) Tod v. Land Co., 57 Fed. 51, 52.

(17) Stoney v. Am. L. Ins. Co., 11 Paige's Ch. Rep. 635.

face, in all respects such as the corporation has authority to issue, and its only defect consists in some extrinsic fact, to hold that the person taking must inquire as to such extraneous facts, of the existence of which he is in no way apprised, would obviously conflict with the whole policy of the law in regard to negotiable paper.[18] Thus, where a corporation has power under any circumstances to issue negotiable securities, the bona fide holder has a right to presume that they were issued under circumstances which give the requisite authority, and that they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper.[19]

What then is the liability of a corporation on a negotiable instrument where its becoming a party thereto was *ultra vires?* As between the original parties, and as between the corporation and a purchaser of the instrument with notice of the *ultra vires* character of the transaction, or a purchaser after maturity, or a holder who is not a purchaser for value, the contract is governed by precisely the same rule as applies to any other contract. It is different, however, when the instrument has passed into the hands of a bona fide purchaser for value and before maturity. In the absence of express statutory provision to the contrary, a corporation cannot avoid liability on a negotiable bill, note or bond in the hands of a bona fide purchaser by setting up the defense that it is *ultra vires* because it was issued in violation of a provision limiting the amount of indebtedness which the corporation might incur, or because it was issued for a purpose for which the corporation was not authorized by its charter to issue it. This rule is within the principle that a corporation is estopped as against a party without notice to deny the validity of a contract which is apparently within its powers, but which is *ultra vires*, by reason of extraneous facts.[20]

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(18) Bank v. Bank, 16 N. Y. 125.

(19) City of Lexington v. Butler, 14 Wall. (N. S.) 296.

(20) 1 Clark & Neas, Priv. Corp. (1910), p. 590.

BACKACHE OR DISABLED BACK AS AN UNCERTAIN ELEMENT IN SUITS FOR DAMAGES.

Let us picture a patient suffering with backache or disabled back seeking relief: If he comes to a specialist on the nose and throat this physician will examine the tonsils and ask about previous attacks of rheumatism. Should he go to a specialist on syphilis a blood examination (Wassermann test) for evidence of syphilis will be made and probably also an X-ray examination of the spine. If he goes to a specialist in genito-urinary work the prostate will be examined and a specialist in internal medicine will examine the heart blood vessels and look for aneurism; in this he will be aided by the X-ray. This physician would also probably examine the blood for evidence of anemia. If he goes to an orthopedic surgeon, this specialist will examine the spine for deviation in curvature from the normal; also the sacro-iliac joint. He will likewise examine for tuberculosis of the vertebrae (X-ray is a great aid in this); then for foot strain (flat foot), the knee for abnormalities, also measure the length of the leg (if one leg is shorter it will tilt the pelvis in walking and cause pain in the back). He will also examine for faulty position in standing, walking, or sitting, which may allow the spine to assume an unnatural and painful position. If this same patient goes to a specialist in the diseases of the stomach and intestines he will be examined particularly for sagging or falling of any abdominal organs which would cause pain in the back. Should he go to a neurologist examination would be made by him of the nervous system as a cause for backache. If the patient is a female and consults a specialist on the diseases of women he will look principally for the cause of her disability in the organs of the pelvis.

Assuming these several physicians are painstaking, honest, and capable, we would not be surprised to find marked dis-

agreement in opinion regarding the cause of disability in this patient. This is seldom understood, especially by the laity, and expert opinion, in consequence, is frequently ridiculed and discredited, but these surprising diversities of opinion can be explained by the well-known psychological fact that we all really see only what we think we understand or what especially interests us. This applies to all individuals. Let us imagine a soldier, an artist, a mining engineer, and a farmer viewing a fairly diversified landscape; the soldier would see possibilities for defense, the artist the elements of a picture, the mining engineer the probability of the presence of minerals, and the farmer would view it from an agricultural standpoint. The same pitcure was formed on the retina of each of these men, but the brain actually saw and selected from the retinal image only what especially interested that individual. It can readily be seen what a different description each one of these men would give of that landscape. Lately I heard a gentleman state that several years ago a man had built a beautiful house in this city. Some of his friends called and were shown through the home. On leaving they discussed among themselves the many beauties of the establishment. One member (an undertaker) startled the party by stating that there was not a set of stairs in the whole house on which a casket could be turned.

The foregoing will show how difficult it may be at times to make a reliable diagnosis of any condition, assuming we have the co-operation of the patient. Now, let us assume such a patient is a litigant claiming damages for personal injuries against a corporation. Our difficulties are markedly multiplied; it is not expected that the physician representing the corporation will have the full co-operation of the patient in making a physical examination; usually opposition is expected and encountered. Likewise, in some cases there is a lack of assistance on the part of the attending physician, who frequently accepts as indisputable facts all statements made by his patient and makes a grave diagnosis without logical examination. Any claimant in cases of backache or disabled back should, if possible, be thoroughly examined for any of the many organic and physical conditions which might cause backache; it will sometimes be found that the claimant is actually suffering, not really from an injury, but from an organic condition which can be demonstrated. I have seen this done, and any one of the conditions noted in the first part of this paper might be found. One example will illustrate this point: A brakeman was recently caught between a car and a signal post, which squeezed him through his hips and lower back. The injury was painful and he was disabled for several weeks, after which he returned to duty, but in a few months stopped work, stating that he was weak and had pains through his hips and back. He naturally blamed the recent accident for this condition. The man at this time was undoubtedly disabled, and a thorough examination was made, in the course of which the blood was examined for syphilis, which was found present. His condition was fully explained to him. He took appropriate treatment, was much benefited and returned to duty. A physician will frequently not be permitted to make a thorough and elaborate physical examination of a litigant, objection being made by the patient, the family, or the attorneys. I might also cite still another case in which an old injury was fradulently connected with a recent accident: A man with an apparently slight injury to his ankle went on crutches and had this ankle X-rayed. The plate showed a definite fracture where he claimed to be disabled. The physician called to examine this man by the company had the advantage of knowing that the claimant had been injured about both ankles several years previous, at which time, however, no X-ray examination was made. The attending physician, a perfectly honest man, knew nothing of the old accident, and interpreted the plates as showing

a recent injury. Suit was instituted. When the physician called by the company examined the X-ray plates he demonstrated clearly that it was a picture not of a recent, but of an old fracture. An impartial X-ray expert was called in, who, after examining the plates, was of the same opinion. This case did not come to trial. It is well to remember that an X-ray picture will not only demonstsrate a fracture, but it will also demonstrate whether that fracture is recent or old.

We now come to that familiar, frequent, and annoying class of cases in which, after a most thorough and painstaking examination, no organic condition can be demonstrated to account for an alleged disability. We find the reflexes all normal, there appears little or no wasting of the muscles, yet the claimant states that he cannot sleep, is nervous, weak, has no appetite and usually complains of backache. The members of his family, in his presence, are voluble in detailing his many harrowing evidences of disability. The attending physicians heartily concur in all these statements, and yet no objective symptom is demonstrated. The claimant has probably been examined frequently by several different physicians and often interviewed by his attorney. He, as well as his family and his physician, may all be people of position in the community, all thoroughly agreeing that the claimant is seriously and permanently disabled. What chance has the corporation with such a case as this? After months or years of anxiety and distress on the part of the claimant the case comes to trial and he must appear in court, with its incident uncertainties, as his final ordeal. Is it at all remarkable that he is really sick? In the trial he is victorious and receives a substantial indemnity. As a result he experiences an immediate mental and physical uplift and is frequently actually surprised and, if honest, somewhat chagrined at his sudden restoration to health; and yet is this at all remarkable? His troubles are at an end. No more anxiety, no more physical examination by physicians and no more legal interviews. The claimant has recovered, not from the effects of an accident, but from litigation disease. It is the same uplifting feeling anyone experiences in sudden good fortune, following a period of distress and anxiety; like the passing of a difficult examination, a promotion in business, or the successful accomplishment of some difficult undertaking. This type of case was formerly designated as traumatic hysteria or traumatic neurasthenia, which terms were used as loosely and with as little meaning as biliousness or malaria. While a disinterested physician would feel that this patient was grossly exaggerating or actually faking his disability, yet unless this physician could actually demonstrate this conclusively to a jury, how disastrous would be his evidence in court in the interest of the company. I recall two cases of importance of this character in which were associated two leading neurologists of this country. The patient in each case was thoroughly examined and no physical defect was found, the terms "traumatic hysteria" and "traumatic neurasthenia" were discarded as archaic, and the term "psychogenic" (formed in the mind) was used as a more definite scientific term. In these two cases the absence of physical defect was carefully explained to the jury. No physician called by the company stated or intimated that the claimant was a faker; the medical testimony was given in a most fair and impartial manner that the jury might draw the logical inferences regarding the actual cause of disability of the claimant. It was evident that the jury in each case, though awarding damages, was impressed with the medical evidence thus offered.

The term psychogenic disclaims the existence of physical defect, yet it is difficult to distinguish between the two types of phychogenic disability, namely, one type in which the patient really believes he is disabled, as manifested by his ideas of his symptoms, and the other type in which he

knows he is faking and is constantly on the defense. Unless the claimant can be thrown off his guard in some way or detected in the performance of some act inconsistent with his alleged disability we cannot distinguish the two types. If the absence of physical defect can be demonstrated and the alleged disability is known to be of psychogenic basis, the next step is to discover the motive, which in litigation, while presumably always financial, may not always be so. A determination of the motive is the analysis of the patient's thoughts, which naturally he will not permit, if possible, as a litigant.

Many patients are disabled and suffer great anxiety and distress due wholly to a psychogenic condition, where there is no litigation involved. The motive may be desire for sympathy, love, or affection, or may be due to a desire to escape some unpleasant duty or experience. The family of the patient seldom understands him, and do him a great deal of harm by being either too harsh or too sympathetic. The physician also most frequently fails to understand this type and does a direct injury in treating him on a physical basis. These unfortunate people are frequently subjected to unnecessary surgical operations and long courses of treatment, after which they are usually much worse. The logical treatment in these cases is a determination of the motive on the part of the patient; in many cases the patient himself does not know. This type of individual is best treated by a competent and conscientious neurologist or some practical, level-headed physician, who understands such people. These patients quickly improve if their longings can be realized or they know they have escaped an unpleasant experience. The sanitaria are usually filled with these unfortunates.

Conclusions. 1. Backache or disabled back may be caused by any one of a large number of physical defects. A proper diagnosis, with the co-operation of the patient, is often a most difficult undertaking.

2. A claimant in personal injury cases may be actually disabled by some physical defect in no way connected with the alleged accident; a demonstration of this is sometimes possible.

3. If, after an intelligent, careful, and exhaustive physical examination, no physical cause can be found to explain the alleged disability, it is fair to assume that this disability may be psychogenic in character. In psychogenic disability the patient himself may be actually and honestly deceived or his symptoms may be entirely fraudulent; a determination of the motive is necessary. This cannot be done while litigation is in progress, because the patient's co-operation during such a time is not to be expected.

H. T. A. LEMON, M. D.

Washington, D. C.

LIBEL AND SLANDER—GOOD CHARACTER.

DEITCHMAN v. BOWLES.

(Court of Appeals of Kentucky, Oct. 19, 1915.)

179 S. W. 249.

In an action for slander, in which the defendant does not seek to show justification for the words used, plaintiff may show as part of his main case in aggravation of damages that he is of good character and that his reputation for honesty in the community is good.

HANNAH, J. J. A. Bowles sued William Deitchman in the Jefferson circuit court for slander. He recovered a judgment in the sum of $500; and the defendant appeals.

This case is the aftermath of a hotly contested election, in the course of which appellant in a campaign speech made remarks to which appellee took exception. The language which plaintiff complained of was as follows:

"This man is a great booster of Highland Park. He robbed his sister-in-law of three hundred dollars, and caused her to have to send her children to an orphan's home."

[1] The word "rob" does not necessarily carry with it the imputation of crime. Given its technical meaning as used in law, it, of course, imports the commission of a felony; but colloquially it is quite often used when no imputation of crime is intended, and, where

used in its colloquial sense, it is not actionable per se.

[2] If a consideration of all the language used at the time the word "rob" was used demonstrates that it was used only in its colloquial sense, it will be held unactionable per se as a matter of law. Macauley v. Elrod, 27 S. W. 867, 16 Ky. Law Rep. 291. But, in the absence of accompanying language determining the quality of expressions having two interpretations, one actionable, and the other nonactionable, it is for the jury to determine in which sense the language was spoken. Beams v. Beams, 138 Ky. 818, 129 S. W. 298; Welsh v. Eakle, 7 J. J. Marsh, 424; Dedway v. Powell, 4 Bush, 77, 96 Am. Dec. 283; Winstead v. Trice, 5 Ky. Law Rep. 863; 12 Ky. Opinions, 590.

[3] The court instructed the jury that, if they believed from the evidence that on November 3, 1913, in the presence and hearing of some other person, defendant, William Deitchman, falsely and maliciously spoke of and concerning plaintiff, the language above set forth, "thereby meaning that the plaintiff had committed the crime of robbery," the jury should find for plaintiff. Defendant objected to this instruction, and asked the court to give an instruction defining the crime of "robbery" as used in the instructions given. This request the court denied, and of this ruling appellant complains.

The case of Beams v. Beams, supra, is directly in point, and conclusive upon the contention here presented. In that case the word "stole" was complained of. After noting that the word has an actionable and a nonactionable sense, and that the plaintiff could not recover if the word was used colloquially, but could recover if it was used in its actionable sense, that is, "meaning thereby to charge the plaintiff with having committed the crime of larceny," the court held that the trial court should have told the jury what constitutes larceny, and should have instructed them that, unless the words spoken by defendant were intended to charge the plaintiff with the crime of larceny, and would be naturally so understood by the persons who heard them, the verdict should be for the defendant.

In the instant case, as the plaintiff may recover only in the event the word "rob" was used in its actionable sense (no special damages being shown), the court, in order that the jury might intelligently determine whether the language complained of was used and was understood by its hearers in its actionable sense, should have told the jury what is required to constitute the crime of robbery, and that, unless they believed from the evidence that the defendant, in using the language complained of, intended to charge plaintiff with the crime of robbery, as in the instructions defined, or that the language used was reasonably calculated to cause the persons who heard it to so understand it, they should find for the defendant. For this error in the instructions defendant is entitled to a new trial.

[4] 2. Appellant also complains that the trial court erred in limiting the number of witnesses permitted to be introduced by each side; but, as the bill of exceptions does not show that any such ruling was made by the court, the complaint cannot be considered upon appeal.

[5] 3. It is further contended by appellant that the trial court erred in refusing to permit him to show that the language complained of was uttered in the course of a hotly contested campaign in which appellant and appellee were opposing candidates for the office of trustee of the village of Highland Park and in response to attacks which had been made upon him by appellee. We think it was competent to show that the language was uttered in the course of such a speech, that the parties were opposing candidates, and also (if defendant so desired) to prove statements made by plaintiff concerning defendant at that meeting, although statements made by him at other times or on other occasions were not competent.

[6] 4. Another ground urged is that the trial court erred in sustaining the objection to a question asked by him on cross-examination of one of appellee's witnesses as follows: "Q. You were a follower of Mr. Bowles in that campaign?" The ruling was right. It was competent, of course, to show that the state of feeling between the witness and appellee was friendly, but not by way of questions like the one propounded.

[7] 5. Finally, appellant complains of the ruling of the trial court in permitting appellee to show that his reputation for honesty was good, no attack upon his character, either by a plea or justification or by evidence, having been made by appellant upon the trial. This has been said to be "one of the most controverted questions in the whole law." 1 Wigmore on Evidence, §§ 70-76. This writer also says:

"The better rule seems to be that his reputation is assumed to be good, and that he has

therefore no need to sustain it until it has been attacked."

Chamberlayne on Evidence, § 3284, says it is difficult to determine which is the prevailing doctrine in regard to the admissibility of evidence of the plaintiff's good character, especially where there is no plea of justification. The same uncertainty in respect to the course of decision and weight of authority is expressed in the following works: 1 Greenleaf on Evidence, § 55; 8 Ency. of Evidence, 274; Newell on Slander and Libel, § 933; 25 Cyc. 507.

We have been able to find but one reported case in this state where the question seems to have been directly presented. In Williams v. Greenwade, 3 Dana, 432, an action of slander, the defendant tendered the general issue, a common-law plea under which the defendant was not permitted to prove the truth of the defamatory words. The court said:

"And, as injury to character is the gravamen of slander, goodness of character may be proved in aggravation as badness may be proved in mitigation of damages in an action of slander."

Under the authority of this case, we hold that plaintiff may introduce in chief evidence of good character, although there be no plea of justification or any evidence offered by defendant attacking plaintiff's character; but, the same being competent only for the purpose of increasing the damages, the jury should be admonished that such evidence may be considered only as bearing upon that question.

For the errors indicated, the judgment is reversed for further proceedings consistent herewith.

NOTE.—*Evidence of Good Character of Plaintiff in Action for Libel or Slander Where Not Assailed by Evidence or Plea of Justification.*—It was early ruled in Massachusetts that, if there is a plea of justification, the mere fact of filing such makes evidence of plaintiff's character admissible in chief, because it is said: "The very placing upon the record a solemn averment of the truth will have a tendency to impeach that character. * * * In such case it seems just that the plaintiff should have the right, by proof of the general tenor of his conduct and character to repel such an imputation. * * * It is upon this principle and with this view, that a man on trial for crime is allowed to show a fair general character to the jury; and the cases are quite analogous." But where there is no such plea filed it was said: "To say the least of this kind of evidence, it is unnecessary, and if allowed may tend inconveniently to procrastinate trials," the presumption of law being in favor of plaintiff's good character until successfully impeached. Harding v. Brooks, 22 Mass. (5 Pick.) 244.

A related ruling is found in Palmer v. Mahin, 120 Fed. 737, 57 C. C. A. 41, where Sanborn, C. J., says: "While it is not necessary for a plaintiff to prove the falsity of libelous charges where there is no plea of justification, it is always competent for him to do so, to enhance the damages, for it is only thus that the essential character of the publication may be seen, and the difference between a technical and all but harmless misstatement and a cruel and irremediable falsehood may be distinguished and the proper measure of damages applied."

In Morning Journal Assn. v. Duke, 128 Fed. 657, 63 C. C. A. 459, it does not appear what the pleadings were, but it rather seems there was no plea of justification. Lacombe, C. J., said the admissibility of testimony in chief as to the social and business standing is in dispute upon the authorities, but the question was carefully considered in Press Pub. Co. v. McDonald, 63 Fed. 238, 11 C. C. A. 155, 26 L. R. A. 531 and decided in the affirmative.

In the McDonald case there seems to have been no plea of justification, but testimony was admitted to show the social standing of plaintiff. Many cases were cited in support of this ruling. For example, it was said by Sharswood, J., in Klumph v. Dunn, 66 Pa. 147, 5 Am. Rep. 355, that: "The position in life and the family of the plaintiff are always important circumstances bearing upon the question of damages and have always been held admissible for that purpose." See also Bennett v. Hyde, 6. Conn. 24; Peltier v. Miet, 50 Ill. 511; Adams v. Lawson, 17 Gratt. 250, 94 Am. Dec. 455; Shroyer v. Miller, 3 W. Va. 161; Fowler v. Chichester, 26 Ohio St. 9. *Contra,* Gaudy v. Humphries, 35 Ala. 617.

In Foot v. Tracy, 1 John. 52, Kent, C. J., said: "In assessing damages the jury must take into consideration the general character, the standing and estimation of plaintiff in society: for it will not be pretended that every plantiiff is entitled to an equal sum for the worth of character."

In Sothams v. Drovers' Telephone Co., 239 Mo. 606, 144 S. W. 428, it is said: "Our courts have decided that the financial and social standing of both plaintiff and the defendant in libel and slander cases may be given in evidence upon the question of damages. But we are not aware of any rule of law which authorizes the plaintiff to prove specific instances upon that issue."

In Turner v. Hearst, 115 Cal. 394, 47 Pac. 129, it was held not error to allow proof of the extent of plaintiff's practice as a lawyer as it was proper for the jury in estimating his general damages to know his position and standing in society and the nature and extent of his professional practice.

In Smith v. Hubbell, 142 Mich. 637, 106 N. W. 547, it was held allowable for plaintiff to show he had children, had come to a city a poor man and without assistance had built up a profitable business.

The court said it was in aggravation of damages for a plaintiff to prove his own rank and condition in life. We think the great weight of authority is as the instant case holds. C.

ITEMS OF PROFESSIONAL INTEREST.

HENRY STOCKBRIDGE, CHAIRMAN OF THE SECTION OF LEGAL EDUCATION OF THE AMERICAN BAR ASSOCIATION.

Henry Stockbridge was born in Baltimore, in September, 1856. He was graduated from Amherst College in 1877, and one year later, June, 1878, he was graduated from the Law Department of the University of Maryland, and at once entered on the active practice of law in Baltimore.

In December, 1882, he was appointed as Examiner for the Chancery Courts, which position he held until January, 1889, when he resigned. During the same period he did newspaper work on the *Herald* and *American*, and for two years was an editorial writer on the latter paper. In November, 1888, he was elected to the Fifty-First Congress from the Fourth Maryland District, and was the first Republican elected to Congress from Baltimore City since the close of the Civil War. His opponent in that campaign was the late Senator Isidor Rayner, whom he defeated by a plurality of 81 in a total vote of over 40,000.

In 1890, he declined renomination to resume the practice of law. In 1891, he was appointed without solicitation to organize the immigration service at Baltimore. This having been done he resigned that position in March, 1893.

In 1896, he was elected an Associate Judge of the Supreme Bench of Baltimore City by over 10,000 majority, after a campaign in which he had been made the special object of attack by a portion of the press of the city, upon the ground of his political activity.

In April, 1911, he was appointed by Governor Crothers to the Bench of the Court of Appeals of the state to fill the vacancy caused by the death of Judge Samuel D. Schmucker, and elected to the position in November following. In June of the same year the honorary degree of LL.D. was conferred on him by his alma mater, Amherst, and also by St. John's College, Maryland.

In 1912, he was designated as one of the Commissioners from Maryland on Uniform State Laws by Governor Goldsborough, and on the death of the Hon. Amasa M. Eaton, became Chairman of the Committee of that body on the Uniformity of Judicial Decisions. At the meeting of the Commissioners in 1915 he was appointed a member of the Executive Committee.

In 1899, he was elected a lecturer in the Law Department of the University of Maryland on International Law, Admiralty and the Conflict of Laws, and subsequently on the law of Executors and Administrators. In 1906, he was made one of the Regents of the university. At the meeting of the Bar Association at Salt Lake City he was chosen Chairman of the Section on Legal Education of the American Bar Association.

In addition to his professional and legal work he has been a prominent member of the Maryland Historical Society, and is one of its vice-presidents. He is also a member of the American International Law Association, as well as the Maryland State Bar Association.

He has for twenty years been a prominent member of the patriotic societies, was President-General of the Sons of the American Revolution, 1908-09, and is now one of the general officers of the Colonial Wars.

He has long been identified with the educational interests of the city, and is one of the Board of Trustees and Vice-President of the Pratt Free Library, and the President of the Trustees of the Endowment Fund of the University of Maryland. A. H. R.

BAR ASSOCIATION MEETINGS—WHEN AND WHERE TO BE HELD.

Connecticut—Hartford, January 31.
Kansas—Topeka, January 27 and 28.
Nebraska—Omaha, December 28 and 29.
New York—New York City, January 14 and 15.
Rhode Island—Providence, December 6.

HUMOR OF THE LAW.

During a civil suit in a Western court the judge decided a contested point against a young lawyer, whereupon the latter lost his head.

"Your Honor," said he, in a palpitating voice, facing the court, "I'm amazed."

Instantly the young lawyer's partner, who happened to be in the courtroom, sprang to his feet.

"Your Honor," interposed he, "I want to apologize for the hasty remark of my young partner. By the time he is as old as I am he will not be amazed at anything your honor does."—Philadelphia Telegraph.

John H. Gundlach, president of the Civic League, enjoys telling this story on himself. He was making a speech to a German-American audience in South St. Louis on the subject of reforms.

He discussed political reform, social reform, civic reform, civil-service reform, and was just launching into a vigorous discussion of his pet hobby, city planning reform, when an old German who had been fidgeting in his seat for some time, and who appeared to be very well satisfied with the way the world was running, jumped to his feet.

"Herr Goondlock," the old German shouted. "I think vot you need iss chlo-reform!"—St. Louis Post-Dispatch.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the Webb Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Interruption.—Under Civ. Code, §§ 1363, 1384, death interrupts the possession of an intestate, and the adverse holding does not pass uninterupted to his heirs, for the personal representatives are entitled to possession.—People's Water Co. v. Anderson, Cal., 151 Pac. 127.

2.——Payment of Taxes.—Payment of taxes is not possession or evidence of possession, but is admissible, where property is claimed adversely, only as tending to show the claim or the character of the occupation.—Daly v. Lewiston & Auburn Children's Home, Me., 95 Atl. 219.

3.——Prescription.—The actual possession of land sued for by one, claiming it as his own, for about 40 years, without recognition of any claim, right, or title of another, operated as an absolute repose under the doctrine of prescription.—Vidmer v. Lloyd, Ala., 69 So. 480.

4. **Assignments for Benefit of Creditors**—Reservation of Rights.—That certain creditors reserve right to reduce their claim to judgment does not prevent their being bound by agreement to the debtor with his creditors for administration of his property by a committee for payment of his debts.—Bickley, McClure & Co. v. Porter, Ala., 69 So. 565.

5. **Assumpsit, Action of**—Common Counts.—Under the common counts, plaintiff, a general insurance agent, could recover of his subagent all that was due him under the evidence, where nothing remained to be done under the agency contract, except the payment to the agent of certain liquidated sums of money.—Barnes v. Marshall, Ala., 69 So. 436.

6. **Attachment**—Damages.—In an action for wrongful attachment, an allegation that the attachment was abandoned and waived, and that the cause was fully disposed of, sufficiently shows dissolution of the attachment to warrant an action for damages.—Overton v. Sigmon Furniture Mfg. Co., Okla., 151 Pac. 215.

7. **Attorney and Client**—Collections. — The total sum of money collected by an attorney for his client, and not the balance after deducting the attorney's fee, belongs to the client, and it is the attorney's duty to pay the same over without unreasonable delay.—Peters v. State, Ala., 69 So. 576.

8. **Bailment**—Contract.—On termination of executory contract to manufacture and deliver goods by plaintiff's rescission, plaintiff held entitled to recover possession of tools furnished to defendant under the contract.—Delaware Marine Supply Mfg. Co. v. Philadelphia Lamp Mfg. Co., Del., 95 Atl. 235.

9. **Bankruptcy**—Act of.—Filing of petition for receivership by majority stockholder, to which company filed no answer, held not an act of bankruptcy by the corporation, within Bankr. Act, § 3a (1).—In re Valentine Bohl Co. U. S. C. C. A., 224 Fed. 685.

10.——Appointments.—In view of the fact that a mortgagee's attorney was appointed trustee and that he necessarily acted in a dual capacity, held, that delay in filing an intervention to correct mistake after an order disallowing priority of petitioner's mortgage would not be charged against petitioner.—In re Williams, U. S. D. C., 224 Fed. 984.

11.——Homestead.—The court of bankruptcy will not uphold a bankrupt's claim of homestead exemption, where that would merely enable him to prefer one of several creditors for whose benefit he had waived the exemption.—In re Anderson, U. S. D. C., 224 Fed. 790.

12.——Injunction.—A bankruptcy court has no power to enjoin sale of bankrupt's property to be made by state officer, pursuant to decree of foreclosure of a state court, entered before petition in bankruptcy was filed, to permit trustee to attempt to secure purchaser and advertise sale more extensively.—In re Schmidt, U. S. D. C., 224 Fed. 814.

13.——Parties.—Persons having a lien on the property of a bankrupt passing to his trustee are not parties to the bankruptcy proceeding, unless they come into the bankruptcy court to enforce their rights.—In re Reading Hat Mfg. Co., U. S. D. C., 224 Fed. 786.

14.——Partnership.—Knowledge of a partnership creditor that the partnership is insolvent does not charge the creditor with knowledge that an individual partner is insolvent.—In re Hull, U. S. D. C., 224 Fed. 796.

15.——Preference.—Sellers of property held, not entitled to insurance placed thereon by the buyers, the original agreement of sale having been superseded by a chattel mortgage, and hence, the buyers being insolvent, a payment of the insurance money to the sellers constituted a preference.—Bunday v. Huntington, U. S. C. C. A., 224 Fed. 847.

16.——Preference.—Lease, though not recorded, held to give landlord equitable lien for rent, good as against creditors; and hence, though recorded a few days before bankruptcy, there

was no avoidable preference.—In re Floyd-Scott Co., U. S. D. C., 224 Fed. 987.

17.——Reservation of Title.—A landlord of a farm and stock, with title reserved to hay and fodder to preserve the stock, held, as against the trustee in bankruptcy of the tenant, not to have released his title.—In re Place, U. S. D. C., 224 Fed. 778.

18. **Banks and Banking** — Accommodation Maker.—Bank, suing on notes made by defendant for accommodation of one W. and indorsed to it by W. held chargeable with notice thereof to its president, its sole representative in the transaction, notwithstanding president's adverse personal interest.—Tatum v. Commercial Bank & Trust Co., Ala., 69 So. 508.

19.——Estoppel.—The government, prosecuting for embezzlement a disbursing officer drawing checks on a government depository, forging indorsements thereon, and applying proceeds to his own use, held not estopped from recovering from the depository the amount paid. —National Bank of Commerce v. United States, U. S. C. C. A., 224 Fed. 679.

20.——Priority.—Under Acts 1911, p. 50, the superintendent of banks has a priority of right in the administration of the assets of a liquidating bank superior to those of an assignee who has sought the administration of his trust in the chancery court.—McDavid v. Bank of Bay Minette, Ala., 69 So. 452.

21. **Bills and Notes**—Consideration.—That the consideration of a note is realty rather than personalty does not change the rule that a purchaser of the note is not affected by his knowledge of the consideration.—Whitter v. Railway Postal Clerks Inv. Ass'n, Ga. App., 85 S. E. 973.

22.——Notice.—Bank holding notes indorsed to it by payee, who was the principal debtor, with knowledge that the had been made by defendant for payee's accommodation, and which failed to apply principal's deposit to their payment, thereby discharged defendant.—Tatum v. Commercial Bank & Trust Co., Ala., 69 So. 508.

23. **Carriers of Goods**—Damages.—A shipper of second-hand furniture may recover as for its loss, though it was merely delayed, where he had bought new furniture on the carrier's statement that the shipment was lost, and it would not sell, so as to leave any substantial amount over expenses.—Givens v. Seaboard Air Line Ry. Co., S. C., 86 S. E. 24.

24.——Livestock.—A stipulation in the contract that any claim for damages to the live stock shipped should be made within five days after the stock was unloaded held unreasonable. —Crawford v. Southern Ry. Co., S. C., 86 S. E. 19.

25.——Special Damages.—In an action against a carrier for delay in the transportation of plaintiff's carnival outfit and troupe, estimates by plaintiff as to the profits he would have earned if the show had arrived in time were insufficient as a basis of damages.—Central of Georgia Ry. Co. v. Weaver, Ala., 69 So. 521.

26. **Carriers of Passengers**—Ejection.—In a passenger's action for ejection from plaintiff's waiting room, a plea that the plaintiff had gone to the station six hours before the arrival of the train held to state a good defense.—Widener v. Alabama Great Southern R. Co., Ala., 69 So. 558.

27——Negligence.—Where a brakeman on defendant's train placed a torpedo which he found at the station on the track to see whether it would explode and it did, injuring a passenger, the carrier was liable.—Kansas City Southern Ry. Co.v. Willsie, U. S. C. C. A., 224 Fed. 908.

28.——Relation of Passenger.—A workman, boarding a laborers' train without permission for the purpose of securing employment, is not a passenger, and cannot recover for injuries sustained by reason of a defective handlebar.—Schifalacqua v. Atlantic City R. Co., Pa., 95 Atl. 260.

29. **Chattel Mortgages**—Possession.—In the absence of any circumstance reflecting upon the lawfulness of the possession of a horse by a mortgagor, a purchaser has the right to rely on the prima facie presumption of ownership resulting from such possession.—Donahoo Horse and Mule Co. v. Durick, Ala., 69 So. 545.

30. **Commerce**—Constitutional Law. — Act Oct. 1, 1903 (Acts 1903, p. 342) §§ 1-5 (Code 1907, § 3573), authorizing associates to incorporate, and under which they were incorporated, to own and lease lands to apply and demonstrate the single tax principal of taxation, held not to violate Const. U. S. art. 1, §§ 8, 9.—Fairhope Single Tax Corporation v. Melville, Ala., 69 So. 466.

31. **Constitutional Law**—Hours of Service Act.—Hours of Service Act, classifying telegraph offices into two classes and limiting the hours of work in offices of each class, held to make a reasonable classification.—United States v. Grand Rapids & I. Ry. Co., U. S. C. C. A., 224 Fed. 667.

32.——Impairment of Contract.—The Anti-Advertising Liquor Law, prohibiting publication in the state of liquor advertisements, is not invalid, as working an impairment of contracts, even though publishers already had contracts for the publication of such advertisements.—Advertiser Co. v. State, Ala., 69 So. 501.

33.——Statutes.—Statutes cannot be pronounced void because violative of the judicially conceived "spirit" of the Constitution, or "contrary to first principles of common or natural right," or opposed to "public policy."—Fairhope Single Tax Corporation v. Melville, Ala., 69 So. 466.

34.——Trade Secrets.—In a suit to restrain plaintiff's former employe from divulging secret processes for making artificial leather, an order restraining defendant from disclosing such processes in conference with his witnesses held a restriction upon his right to due process of law.—Masland v. E. I. Du Pont de Nemours Powder Co., U. S. C. C. A., 224 Fed. 689.

35. **Contracts**—Damages.—A party to an executory contract for the manufacture and delivery of goods, injured by the other's rescission, cannot recover additional damages by ignoring such rescission and proceeding with the manufacture and delivery.—Delaware Marine Mfg. Co. v. Philadelphia Lamp Mfg. Co., Del., 95 Atl. 235.

36. **Copyrights** — Dramatic Composition. — Dramatic composition, having a dual personality for its motif, held not an infringement or plagiarism of complainants' copyrighted play, having the same motif.—Bachman v. Belasco, U. S. C. C. A., 224 Fed. 817.

37. **Corporations**—Foreign Corporation.—The loaning of money by a foreign corporation and securing its payment by mortgage on real estate is "engaging in business" in the state within the statute, although there be but a single transaction.—Colburn v. Coke, Ala., 69 So. 574.

38.——Pleadings.—A bill for the dissolution of a corporation, not averring with sufficient particularity any effort to have the wrongs complained of corrected by its officers, held not maintainable.—Fairhope Single Tax Corporation v. Melville, Ala., 69 So. 466.

39.——Priorities.—On foreclosure of a mortgage on the plant of a private corporation, the court cannot give priority to receivers' certificates and expenses of a receivership, obtained by a junior mortgagee over the objection of the first mortgagee.—First State Bank of Hubbard v. Hubbard Farmers' Oil & Gin Co., Tex. Civ. App., 178 S. W. 1015.

40——Secret Profits.—A director of a corporation is not entitled to secret profits made in a transaction between him and the corporation but is only entitled to retain profits made on a full disclosure of the facts.—Highland Park Inv. Co. v. List, Cal. App., 151 Pac. 162.

41. **Criminal Law**—Habeas Corpus.—A discharge on habeas corpus from an unauthorized sentence to the penitentiary upon a conviction permitting a sentence only to hard labor for county was a discharge merely from custody under void sentence, and not from the penalty attached by law for the offense of which defendant had been legally convicted.—Ex parte Gunter, Ala., 69 So. 442.

42. **Damages** — Inference from Evidence.—Where the injury is objective, and it clearly appears that the injured person must undergo future suffering, the jury may infer that fact from proof of injury alone.—Shawnee-Tecumseh Traction Co. v. Griggs, Okla., 151 Pac. 230.

43.——Measure of.—In an action for damages to growing crops by fumes from a fertilizer factory, evidence as to how much the land would have yielded if it had not been injured held admissible as to the amount of damages at the time of injury.—International Agr. Corporation v. Burton, Ala., 69 So. 417.

44. **Dedication**—Acceptance.—Until there is an acceptance of a dedicated street by some municipal act of public usage, the public acquires no rights therein, and is subject to no duties by reason of the dedication.—United New Jersey R. & Canal Co. v. Crucible Steel Co., N. J. Ch., 95 Atl. 243.

45. **Easements**—Dominant Owner.—As to way established by agreement over part of a street leading to a dedicated street in the lands of the parties, the dominant owner had the right to enter and grade it, if necessary.—United New Jersey R. & Canal Co. v. Crucible Steel Co., N. J. Ch., 95 Atl. 243.

46.——Prescription.—User which is merely permissive, or which exists by the toleration of the owner, and in subordination to and in recognition of an implied license from him, will not mature into a prescriptive right, but is revocable at pleasure.—Hill v. Wing, Ala., 69 So. 445.

47. **Embezzlement**—Evidence. — Where bank funds were in the joint custody of the cashier and a third person, the cashier could not be convicted of embezzling the funds, in absence of evidence that he was the one who misappropriated them.—Clark v. State, Miss., 69 So. 497.

48. **Estoppel**—Fraud.—One who has consented to a sale of mortgaged chattels securing his debt with full knowledge of the facts and has received the benefit of the mortgage, is estopped from suing in equity for fraud to recover the balance.—Bram v. Christopher, Cal. App., 151 Pac. 172.

49.——Representations.—The heirs of an administrator, who sold a donation certificate issued to the heirs of his intestate on representations that it belonged to the estate, were estopped from claiming any interest therein.—Moody v. Bonham, Tex. Civ. App., 178 S. W. 1020.

50. **Evidence**—Admissibility.—A town treasurer may testify to receiving a check for the town, subject to explanation or inquiry respecting entry thereof in his records.—Inhabitants of Rumford v. Inhabitants of Upton, Me., 95 Atl. 226.

51.——Admissibility.—Admissions made after the accident and out of the hearing of plaintiff, by the driver of the car in which plaintiff was riding when injured, are inadmissible except to contradict the driver.—Loose v. Deerfield Tp., Mich., 153 N. W. 913.

52.——Expert Testimony.—While intimate acquaintances may give their opinion as to the sanity of a testator, non-expert witnesses may not testify hypothetically as to testator's sanity.—In re Martin's Estate, Cal., 151 Pac. 138.

53.——Expert Testimony.—In an action for personal injury from defendant's negligence in causing the train and caboose in which plaintiff was riding to be violently jolted, non-expert testimony as to the severity of the jolt was admissible.—Kansas City Southern Ry. Co. v. Clinton, U. S. C. C. A., 224 Fed. 896.

54. **Frauds, Statute of**—Debt of Another.—An agreement by defendant to pay plaintiff, another creditor of a company in difficulty, held one merely to answer for the debt of another, and not enforceable as an independent agreement.—Campbell v. Weston Basket & Barrel Co., Wash., 151 Pac. 103.

55. **Fraudulent Conveyances** — Badge of Fraud.—That the parties to an alleged sale are close relatives does not establish the sale was in fraud of creditors, but such fact should be considered and the transaction will be closely scrutinized.—Crisp v. Gillespey, Okla., 151 Pac. 196.

56. **Guardian and Ward**—Investments. — A guardian making investments without any order authorizing them held not liable for loss, where he acted honestly and exercised a sound discretion.—Mumford v. Rood, S. D., 153 N. W. 921.

57. **Habeas Corpus**—Writ of Error.—Where an indictment was bad, whether petitioners, having opportunity to challenge it in the lower court, and if necessary by writ of error, did so or not, they could not use the writ of habeas corpus for the purpose of a writ of error.—Morgan v. Ward, U. S. C. C. A., 224 Fed. 698.

58. **Homicide**—Evidence.—In a prosecution for homicide, evidence of similarity between tracks of mule found near place of homicide and tracks of mule driven in town by party with whom defendant was alleged to have been in conspiracy held admissible.—Brindley v. State, Ala., 69 So. 536.

59.——Insanity.—That the mother and a maternal aunt of accused were sent to the asylum held not available to show accused's insanity.—James v. State, Ala., 69 So. 569.

60. **Hospitals**—Negligence.—It may be negligence for those in charge of a hospital to leave a solution of bichloride of mercury in a patient's room where it might be reached by him while delirious.—Wilbur v. Emergency Hospital Ass'n, Cal. App., 151 Pac. 155.

61. **Husband and Wife**—Community Property. —Though a partition of community property by agreement between husband and wife, made when separated, was fair, it would be vacated by their subsequent living together; there being no provision to the contrary.—Cox v. Mailander, Tex. Civ. App., 178 S. W. 1012.

62. **Injunction**—Suspension of Writ.—Since a superior court may not revoke or modify its judgments and orders where the statute prescribes the method of review except as authorized, it cannot suspend the operation of a temporary injunction pendente lite.—San Francisco v. Superior Court in and for City and County of San Francisco, Cal., 151 Pac. 129.

63. **Innkeepers**—Damages.—In an action by a hotel guest, where the complaint shows a wrongful invasion of plaintiff's room, a violation of his rights of privacy, and humiliation suffered by removal of his effects therefrom, damages for humiliation and indignity may be awarded.—Florence Hotel Co. v. Bumpus, Ala., 69 So. 566.

64. **Insurance**—Burden of Proof.—An insurer defending on the ground of fraudulent statements as to the amount of loss contained in the proofs of loss has the burden of proving the fraud.—Cole v. North British Mercantile Ins. Co., Me., 95 Atl. 217.

65.——Estoppel.—In an action by a general insurance agent to recover part of the premiums due, under contract, on policies sold by a subagent, the plaintiff's denial of sub-agent's right to collect premium notes and his undertaking to collect them directly from the policy holders, held to estop him from charging the sub-agent therewith.—Barnes v. Marshall, Ala., 69 So. 436.

66.——Fraud.—An assignment to a brother-in-law, at his instance, for $2,500, of a life policy for $5,000, a few days before death of insured, and when he was in extremis, held void, as an unconscionable contract, for constructive fraud in procuring it.—Prudential Life Ins. Co. of America v. La Chance, Me., 95 Atl. 223.

67.——Waiver.—Where plaintiff admitted filing only one claim for sickness, and there was no evidence that a stipulation of the contract requiring weekly reports of the member's condition was waived, held, that a judgment for more than one week's disability was unauthorized.—Pilgrim Health & Life Ins. Co. v. Gray, Ga. App., 85 S. E. 970.

68. **Internal Revenue**—Excise Tax.—A street railway held not to do business, within Act Aug. 5, 1909, imposing an excise tax on corporations doing business.—Philadelphia Traction Co. v. McCoach, U. S. D. C., 224 Fed. 800.

69. **Intoxicating Liquors**—Local Option.—The state-wide prohibition law, adopted under the initiative and referendum amendment to the Constitution (Laws 1911, p. 139), does not repeal or suspend the local option law (Rem. &

Bal. Code, § 6292 et seq.) during the interval between its passage and the time it takes effect. —State v. Paul, Wash., 151 Pac. 114.

70. **Landlord and Tenant**—Farm Lease.—A lease of a farm and live stock for a term of years, stipulating that title to hay and fodder shall remain in landlord, and binding the tenant to insure for the benefit of the landlord, reserves the hay and fodder for the preservation of the stock, and not merely as security for the rent.—In re Place, U. S. D. C., 224 Fed. 778.

71. **Libel and Slander.**—Libel per se.—Newspaper article denouncing verdict for plaintiff in another libel suit on the ground that the communication was privileged held not itself libelous.—Egan v. Eastwood, S. D., 153 N. W. 917.

72. **Limitation of Actions**—Bond Under Seal. —In an action on a bond under seal, recovery could be had at any time within 20 years after the liability accrued; and hence the petition was not demurrable, though defendant may have collected the accounts covered by the bond more than five years prior to the suit.—Harrison v. Douglas, Ga. App., 85 S. E. 970.

73.——Mandamus.—Mandamus by the holder of a prior certificate for school lands to compel the register of the state land office to issue a patent is, where the land had been sold to a subsequent purchaser, in the nature of an action to require specific performance, and the statute of limitations applies.—Aikins v. Kingsbury, Cal., 151 Pac. 145.

74. **Master and Servant**—Agency.—The owner of an automobile is not responsible for the acts of his son while driving it, unless the son was his agent or servant, express or implied, and the relationship of parent and son does not of itself alone establish the agency.—Erlick v. Heis, Ala., 69 So. 530.

75.——Course of Employment.—The relation of master and servant continues for such reasonable time after a train reaches its destination and the trainman ceases to labor as is required to enable him to wash himself and change his clothing according to custom.—Easter v. Virginian Ry. Co., W. Va., 86 S. E. 37.

76.——Instructions.—An instruction to determine whether defendant or its agent knew of the defect in the scaffold if it was defective, held erroneous for failure to tell the jury to ascertain whether the master by ordinary care ought to have known of the defect.—Mitchell v. J. S. Schofield's Sons Co., Ga. App., 85 S. E. 978.

77.——Instructions.—Where a servant had several fingers cut off in a punch press, and plaintiff's own case showed that a guard on the machine would not have prevented the accident, a charge eliminating defendant's negligence in that respect was proper.—Taschner v. Stern, Pa., 95 Atl. 262.

78.——Negligence.—Railroad engaged in riprapping bank of stream held not negligent in furnishing servant only line bars for unloading car-loads of rock.—Sainis v. Northern Pac. Ry. Co., Wash., 151 Pac. 93.

79.——Proximate Cause.—Master held not liable, where act of servant in pushing back a moving belt with his foot, instead of stopping the machinery, was the proximate and sole cause of his injury.—Ovett Land & Lumber Co. v. Adams, 69 So. 499.

80.——Respondent Superior.—A master held not liable for injury from a negligent act of its superintendent in discharge of duties outside the master's non-delegable duties and while doing a servant's work.—Studevant v. Blue Springs Lumber Co., Ga. App., 85 S. E. 977.

81.——Suitable Appliances.—Where the foremen of a bridge gang was injured while doing laborer's work in putting a bent in a trestle in place, in the absence of an emergency, the rule that the master must provide proper and suitable appliances does not apply.—Cline v. Southern Ry. Co., S. C., 86 S. E. 17.

82.——Vice-Principal.—An older callboy, instructing a new employe in his duties in calling train crews, held not a vice-principal in instructing him to jump on or off moving trains. —Vanordstrand v. Northern Pac. Ry. Co., Wash., 151 Pac. 89.

83.——Volunteer.—A person who at request of a depot agent voluntarily undertook to assist a porter in loading a trunk held a mere volunteer to whom the master owed no duty except that owing to a trespasser.—Southern Ry. Co. v. Duke, Ga. App., 85 S. E. 974.

84.——Warnings.—The master's duty to warn and the knowledge of the master under the superintendent subdivision of the Employers' Liability Act, is embraced in the allegations "negligently caused," "negligently allowed," "negligently permitted," and "negligently failed to warn."—Tennessee Coal, Iron & R. Co. v. Moore., Ala., 69 So. 540.

85.——Workmans' Compensation Act. — The provision of P. L. 1913, p. 302, amending Workmen's Compensation Act, that claims for personal injury shall be barred, unless agreed upon or sought to be adjudged thereunder within one year. does not apply to an accidental injury received before its passage.—Birmingham v. Lehigh & Wilkesbarre Coal Co., N. J. Sup., 95 Atl. 242.

86. **Monopolies**—Courts.—The court does not violate the state or federal anti-trust laws by taking possession of and operating an insolvent railroad company through its receiver, though the company itself acquired some of its property in violation of such laws.—Kansas City Southern Ry. Co. v. Lusk, U. S. C. C. A., 224 Fed. 704.

87. **Mortgages**—Foreclosure.— That property was advertised to be sold under a foreclosure decree for a certain sum and was sold for a less sum does not prevent confirmation in absence of a showing that it was sold for less than its value or that the mortgagors were prejudiced.—Dewitz v. Joyce-Pruitt Co., N. M., 151 Pac. 237.

88. **Municipal Corporations**—Bidding for Public Work.—A contract made by a municipality without soliciting bids, where the statute prescribes the competitive method, is illegal, and imposes no liability.—Arthur v. City of Petaluma, Cal. App., 151 Pac. 183.

89.——Bonds.—A city, authorized by vote to issue $90,000 of special bonds for purchase of waterworks, could not limit the issue of that sum and meet additional expenses from the general fund.—Uhler v. City of Olympia, Wash., 151 Pac. 117.

90.——Contributory Negligence.—The driver of coal wagon, allowing the horses to trot while one wheel was in the gutter of a street, whereby he ran against a flagstone over a manhole and was thrown out and killed, was guilty of contributory negligence, precluding recovery for his death.—Short v. City of Carbondale, Pa., 95 Atl. 254.

91.——Injunction. — Relief by injunction agains the obstruction of a public street cannot be granted, without proof that it has been accepted as a public street, with obligation to repair it for public passage.—United New Jersey R. & Canal Co. v. Crucible Steel Co., N. J. Ch., 95 Atl. 243.

92.——Licenses.—Ordinances subjecting licensed money lenders to punishment for charging usurious interest if construed as annual license ordinances, justified a conviction of one in one year for an offense committed the preceding year under the ordinance of that year.—City of Columbia v. Philips, S. C., 85 S. E. 963.

93.——Statute.—The Legislature has ample authority to alter or amend the charter powers of municipal corporations in the states by general law, and to repeal by general or local law the charter of any such corporation.—State v. Thompson, Ala., 69 So. 461.

94. **Ne Exeat**—Equity.—The writ of ne exeat is in the nature of equitable bail, and ordinarily issues only upon an equitable claim of a pecuniary nature in an amount certain, or to secure the payment of alimony to a wife.—Palmer v. Palmer, N. J. Ch., 95 Atl. 241.

95. **Negligence**—Implied Warranty. — The manufacturer of chewing tobacco held not liable to a remote purchaser of a plug for injury from an imbedded bug, of which it did not know or have notice.—Ligget & Myers Tobacco Co. v. Cannon, Tenn., 178 S. W. 1009.

96. **Partnership**—Contract.—A contract between four persons, stipulating that each would furnish an equal amount sufficient to option a coal field, and share alike in all options, held

to impose an implied obligation on each to furnish a fourth of additional sum necessary.—Jackson v. Jackson, U. S. C. C. A., 224 Fed. 888.

97.——Presumption.—Where it was admitted defendants were partners in 1907 and nothing appears as to the dissolution of the partnership, it will be presumed they were partners in 1910.—Bowles v. Biffles, Okla., 151 Pac. 193.

98. **Post Office**—Scheme to Defraud.—Where loans were obtained by virtue of a false financial statement sent through the mails, held, that there was an artifice to defraud within Criminal Code, § 215, though the borrower was then solvent.—Betiman v. United States, U. S. C. C. A., 224 Fed. 819.

99.——Scheme to Defraud.—One using the mails in carrying out a scheme to defraud by inducing another to send goods on approval with intent of converting them held guilty of violating Criminal Code, § 215.—Tucker v. United States, U. S. C. C. A., 224 Fed. 833.

100. **Principal and Agent**—Evidence.—Agency cannot be established by the extrajudicial statements or declarations in pais of one pretending to act as agent, and evidence as to such statements or declarations is incompetent and inadmissible for that purpose.—Spoon v. Sheldon, Cal. App., 151 Pac. 150.

101.——Waiver.—The act of a subagent in furnishing automobiles to another dealer outside of his agent's territory, if a violation of his sales agency contract, entitling the principal to stipulated damages, was waived by the principal's failure to immediately terminate the contract and by its conduct in permitting the sub-agent to represent it.—Doering v. Denison, Tex. Civ. App., 178 S. W. 1018.

102. **Public Lands**—Laches.—Where a purchaser of school lands abandoned them and failed to pay interest or installments for over 37 years notwithstanding the property was after the lapse of a few years sold to another, he was guilty of laches which barred subsequent recovery.—Aikins v. Kingsbury, Cal., 151 Pac. 145.

103. **Quieting Title**—Cloud on Title.—Where the mortgage debt was paid at the time of the foreclosure, there could be no redemption, and the only possible relief in chancery would be to have the deed canceled as a cloud on title.—Drum & Ezekiel v. Bryan, Ala., 69 So. 483.

104. **Railroads**—Proximate Cause. — The blocking of a public crossing and negligently delaying travel rendered a railroad liable only for the proximate consequences, and injury to one attempting to cross over the bumpers of two connecting freight cars was not a proximate consequence thereof.—Central of Georgia Ry. Co. v. Chambers, Ala., 69 So. 518.

105.——Receiver.—Where the insolvent railway company 14 years before had acquired its own terminal facilities, receivers may renounce a contract whereby the corporation leased terminal facilities from appelant, though acquisition might have been in violation of the Anti-Trust Law.—Kansas City Southern Ry. Co. v. Lusk, U. S. C. C. A., 224 Fed. 704.

106. **Receivers**—Wear and Tear.—Receivers, during the time they used electric current, before composition with the creditors, held liable for the ordinary and reasonable rate for temporary use, though the debtor had a contract for a lower rate, under which he was in arrears.—Odell v. Bedford Co., U. S. D. C., 224 Fed. 996.

107. **Sales**—Conditional Sale.—Seller of team under contract of conditional sale held not required to wait more than three weeks after buyer's failure to pay balance of purchase price or to deliver possession before action for repossession, with replevin of the team.—Carabin v. Wilhelm, Wash., 151 Pac. 87.

108.——Public Policy.—A bill of sale executed by plaintiff to save his brother-in-law from criminal prosecution for embezzlement held void as against public policy, showing on its face that it was given to compound a criminal prosecution.—Tucker v. Cox, S. C., 86 S. E. 28.

109. **Sheriffs and Constables**—Homicide.—A homicide by deputy sheriff while investigating a crime, but not in the prosecution of any official duty or upon one having any connection with the crime, is not such official misconduct as will subject the sheriff and his sureties to a suit upon his bond.—Robertson v. Smith, Ga. App., 85 S. E. 988.

110. **Shipping**—Charter Party.—Under a charter party which fixes the same rate of speed for loading and discharging, the time for loading and discharging is not to be brought into hotchpot, but each period is to be reckoned separately.—Bailey v. Manufacturers' Lumber Co., U. S. D. C., 224 Fed. 806.

111. **Street Railroads**—Presumption.—In an action for injuries to a truck, in collision with defendant's street car, requested instruction that the motorman had the right to presume that the driver of the truck would drive off the track held properly refused.—Birmingham Ry., Light & Power Co. v. Broyles, Ala., 69 So. 562.

112. **Trade-Marks and Trade-Names**—Injunction.—Manufacturer of candy transferring to corporation organized by him right to use his name held properly enjoined from using such name in connection with another candy manufacturing enterprise.—Guth v. Guth Chocolate Co., U. S. C. C. A., 224 Fed. 932.

113.——Unfair Competition.—Wholesalers who sell to retailers imitation Canadian whisky in the wood, knowing that most of that so purchased is used in fraudulently refilling bottles, held chargeable with unfair competition.—Hiram Walker & Sons v. Grubman, U. S. D. C., 224 Fed. 725.

114. **Time**—Computation.—Code 1915, § 4647, requiring notices of foreclosure sales to be published "once each week for four successive weeks," does not require that full four weeks shall elapse between the first insertion and the day of sale, but the sale may be had at any time not less than three days after the last insertion.—Dewitz v. Joyce-Pruitt Co., N. M., 151 Pac. 237.

115. **Waters and Water Courses**—Flood.—A railroad company, maintaining a culvert sufficient to carry off water from ordinary rainfall, held not liable for overflowing the land of another during an unprecedented flood.—Nashville C. & St. L. Ry. v. Yarbrough, Ala., 69 So. 582.

116. **Wills**—Construction.—The reason for the rule which requires a construction in favor of vested remainders rather than contingent remainders is that any other construction excludes the heirs of him to whom the remainder is if he should happen to die pending the particular estate.—Frasier v. Scranton Gas & Water Co., Pa., 95 Atl. 256.

117.——Nuncupative Will.—To sustain a will as a nuncupative will, it must be proved that decedent, while uttering the words offered as a will, had a present testamentary intention, and that he intended that the words then uttered, and no others, should constitute his will.—Brown v. State, Wash., 151 Pac. 81.

118.——Specific Bequest.—Where testator bequeathing to his wife 20 shares of bank stock while at his death he owned only 12, the wife must have 20 shares or equivalent in value.—Lyons v. Lyons, U. S. D. C., 224 Fed. 772

119.——Testamentary Character. — Grantor's delivery of deed to third person to be delivered to grantee after his death, without intending to divest himself of title, but only to transfer title to the grantee at his death, held ineffectual, because not executed as required by the provisions of Civil Code regulating the making of wills.—Rice v. Carey, Cal., 151 Pac. 135.

120.——Undue Influence.—While a donee, who occupies a position of trust and confidence, must ordinarily show that the gift was not superinduced by undue influence, where a devise is from the parent to a child, in order to shift the burden to the beneficiary, it must appear that the child is the doninant spirit.—Keeble v. Underwood, Ala., 69 So. 473.

121.——Unjust Provisions.—That a will is unjust and cruel is no ground for setting it aside although the fact that testator disinherited those having the best claims upon him will be considered.—In re Martin's Estate, Cal., 151 Pac. 138.